

REMARKS

Applicant has carefully studied the Office Action of 21 October 2003 and offers the following remarks in response thereto.

Claims 1-12 were rejected under 35 U.S.C. § 103 as being unpatentable over Iddon et al. in view of Bruins et al. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every element is shown or suggested in the references. MPEP § 2143.03.

In the previous response, Applicant argued that the combination of references does not teach or suggest a *second flow aggregation process*. Specifically, each of the independent claims recites that the records are sent to not one, but **two** flow aggregation processes. In the Response to Applicant's Remarks section of the Office Action, the Patent Office purports to address this position, but the remarks therein are non-responsive to the real issue. Specifically, Applicant claims **two** flow aggregation processes. Neither Iddon et al. nor Bruins et al. teach, claim or suggest **two** flow aggregation processes. The Patent Office, in its Response to Applicant's Remarks section of the current Office Action, does not address this argument because the Patent Office essentially repeats the text of the rejection of 09 May 2003 without any additional analysis as to where in either reference the **second** flow aggregation process is located. As admitted by the Patent Office (see identical admissions on page 3, lines 9-12 and page 6, lines 1-4), Iddon et al. does not teach transmitting the accounting records to one flow aggregation process, much less **two** flow aggregation processes. Thus, only if Bruins et al. teaches **two** flow aggregation processes has the Patent Office fulfilled its burden in establishing *prima facie* obviousness.

The Patent Office alleges that Bruins et al. teaches a flow aggregation process. Assuming, *arguendo*, that this position is correct, this still only shows **one** flow aggregation process, not **two**. The Patent Office implicitly acknowledges this deficiency at page 3, line 20 - page 4, line 1 (and also identical language on page 6, line 12-15) where the Office Action speaks in terms of a single, unitary flow aggregation process.

The Patent Office finally cites to Bruins et al., col. 4, lines 52-60, pointing out that there are multiple aggregators 240 and that packets are sent to two aggregators 240. Applicant respectfully traverses this assertion. Applicant notes that Bruins et al. at col. 4, lines 33-37 indicates that the secondary filter 230 operates to select a subset of flow data packets 220 from

those filtered by primary filters 230. To the extent that this precludes flow data packets 220 from being sent to the central aggregator 240 (central with respect to Figure 2 of Bruins et al.), the data packets are not sent to two flow aggregation processes.

Even if the flow data packets 220 are sent to multiple flow aggregation processes, a point which Applicant does not concede, Applicant further traverses the motivation to modify the combination. When combining references, the Patent Office is obligated to provide objective evidence that suggests the combination. Further, if the combination does not teach or suggest every claim element, the Patent Office must provide objective evidence as to where there is a suggestion to modify the combination to include a claim element. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). The particular modification proposed by the Patent Office is to "await an acknowledgement signal from the flow aggregation process . . . before discarding the accounting records sent to the flow aggregation process." The motivations offered to make this modification is stated to be to [1] improve accuracy and reliability of the fault tolerance for network accounting architecture, and [2] to provide a method and system for monitoring information about network usage (see Bruins et al., col. 2, lines 6-7), [3] thereby providing a method and system for exporting and using data relating to flows in a flow switching network and responsive to message flow patterns (see Bruins et al., col. 2, lines 17-19). The first point [1] is completely devoid of any objective evidence. Thus, it is improper to consider "improve accuracy and reliability of the fault tolerance for network accounting architecture" as a basis for the modification. The second and third points, [2] and [3], while supported with quotations from Bruins et al., do not suggest the proposed modification. Specifically, there is no evidence that a desire to monitor information about network usage suggests sending the accounting records to two flow aggregation processes and awaiting an acknowledgment signal before discarding the accounting records. Furthermore, there is no evidence that a desire to provide a system for exporting and using data relating to flows in a flow switching network and responsive to message flow patterns suggests sending the accounting records to two flow aggregation processes and awaiting an acknowledgment signal before discarding the accounting records. At best, this evidence suggests creating a system that sends flow data packets to an aggregator. Sending the flow data packets to a single aggregator and immediately discarding the data packet after transmission would readily satisfy points [2] and [3] raised by the Patent Office. This still fails to suggest the proposed modification. To this extent, the Patent Office has relied on

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impermissible hindsight to make a modification to the combination. As this is impermissible, the modification is not supported and the combination without modification does not establish *prima facie* obviousness.

Applicant has tried to schedule a telephonic interview to clarify this issue, but as of the writing of this response, no date has been set because the Examiner has not received the file. Applicant files the present response without the benefit of the interview to preserve the procedural benefits of the two month date rule. If the interview is scheduled in the near future, Applicant will file a supplemental response as appropriate to address the points raised during the interview.

Applicant requests reconsideration of the rejection in light of the fact that the references do not show the **second** flow aggregation process. Even if the references do show the second flow aggregation process, there is no objective evidence to modify the combination in the manner suggested by the Patent Office. Since the references do not have a claim element, the Patent Office has not established *prima facie* obviousness, and Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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